

The facts of the case are as follows. The Appellant on July 31st, 1978 entered into an interim agreement to purchase a farm in Matsqui from Rod's Poultry Farm Ltd. The balance of the cash payment was to be made and the sale completed by September 15th, 1978, but possession of the property was to be delivered up on September 1st, 1978. The deed of land conveying title to the property to the Appellant was registered in the Land Titles office on September 8th, 1978.

On August 31st, 1978 the Respondent issued Regulation #1M-120-1978 entitled "Quota Regulation" which became effective September 1st, 1978. The effect of this regulation was to grant to registered growers as of September 1 their secondary quota as quota and to grant a secondary quota of 7,500 to those holding 48,500 broiler quota or less. Rod's Poultry Farm Ltd. fitted into this category. The regulation further stated that this new secondary quota was not transferrable to any purchaser of a farm. The Respondent, in interpreting the regulation so far as it applied to the Appellant determined that, as the Appellant on the date the regulation came into effect ie September 1st, 1978 was not a registered grower and had not had the farm transferred to him, was not entitled to the new secondary quota. The Respondent did, however, some time later, on compassionate grounds, issue to the Appellant and two or three other growers 3,750 secondary quota, which is 1/2 of what he now maintains he should have received.

The basis upon which the Appellant brings this appeal are:

1. The effective date of his purchase of the farm was July 31st, 1978, the date of the Interim Agreement whereby he agreed to purchase.

2. He should have been informed by the Respondent that September 1st, 1978 was going to be the effective date of Regulation #1M-120-1978 when he first approached the Respondent and showed it a copy of his interim agreement.

3. The facts surrounding the appeal of one Roger Lefebvre wherein the Respondent allowed Lefebvre the additional secondary quota of 3,750, were essentially the same as in this case.

The Respondent argued that legally the effective date of the purchase of the property is the date upon which the deed or conveyance is registered in the Land Titles office and payment is made in full, and that until this time, purchasers may back out of deals and simply forfeit their deposit. As a result therefore, the Respondent stated that it is compelled to rely upon the dates set out in its regulations and that if it did not do so it would be impossible to effectively police them.

With reference to the Lefebvre appeal the Respondent argued that it could be distinguished from the present one on the facts, particularly in that Lefebvre had, in the latter part of August, 1978, shown to the Respondent a contract which indicated that construction was to start on a new barn to house the additional birds which was a prerequisite to obtaining the additional secondary quota. The Respondent indicated that this Board in that case ruled that the Respondent owed a duty to the Appellant to inform him of the impending regulation.

This Board has come to the conclusion that this appeal should not be allowed on the grounds that the Appellant was not, on the date of Regulation #1M-120-1978, either the owner of the farm or a registered grower as the farm had not at that

date been legally transferred to him. He did not therefore, pursuant to the regulation, qualify for the secondary quota. It is also determined that under the circumstances the Respondent did not owe a duty to the Appellant to inform him of the impending regulation. At the conclusion of the hearing the Respondent stated that, although it was of secondary importance, it must argue that this Board did not have jurisdiction to hear this appeal in that the Appellant was well out of time in bringing it. It stated that it had received nothing with respect to an appeal until after it had replied to a letter it had received from the Appellant dated November 28, 1980 requesting the full secondary quota granted by the regulation in question. The Respondent's letter in reply merely stated that it had made the decision in question in September, 1978. In the opinion of this Board this letter did not constitute an order, decision or determination pursuant to which an appeal may be launched pursuant to Section 11, which specifically requires that an appeal be launched within 7 days of the order, decision or determination. In this case the appeal was launched over 2 years from the decision in question. As a result therefore, had this Board not come to the conclusion on the facts that the appeal should fail, it would have done so on the ground that it had not been launched within the time limited by the Statute. The deposit lodged by the Appellant shall be forfeited in its entirety to the Minister of Finance.

DATED at Richmond, B.C. this day of , 1981.

CHAS. E. EMERY, CHAIRMAN
B.C. MARKETING BOARD